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UNCLAS SECTION 01 OF 02 QUITO 002769

SIPDIS

SENSITIVE

PLEASE PASS TO USTR FOR BUD CLATANOFF AND BENNET HARMON,
DEPARTMENT OF LABOR FOR ILAB: JORGE PEREZ-LOPEZ AND CARLOS
ROMERO, DEPARTMENT FOR WHA/AND, WHA/PPC, DRL/IL AND EB

E.O. 12958: N/A

TAGS: [ILAB](#) [PGOV](#) [EC](#)

SUBJECT: EMBASSY VIEWS ON GOE LABOR DECREE

¶11. (SBU) Summary: The publication on October 14 of the presidential decree on subcontracting is an important if not ideal step forward that comes at some political cost to President Gutierrez and Labor Minister Raul Izurieta. Ecuadorian and U.S. private sector interests are already attacking the decree, confirming our view that this attempt to regulate subcontracting will raise the costs to employers of abusing subcontracting to curtail worker rights. Though not ideal, we believe the decree represents a good faith effort by the GoE to fulfill one of its commitments under the ATPDEA. We firmly agree that more substantive labor reform is needed and will require a sustained USG effort to support and Congressional action. The decree drafting process shows that will not be easy; we can best advance the prospects for reform by welcoming the decree and supporting further reform.

End Summary.

Despite Delays and Disappointments...

¶12. (SBU) We have been as frustrated as our colleagues in Washington by the agonizing process of change and missed deadlines that plagued the drafting of this decree. Delay and disappointment with regard to decrees, far from being exceptional, are the norm here, where any presidential action has the potential to destabilize a weak and unpopular government. Labor rights, as elsewhere, are inherently sensitive political issue here, alternately able to alienate powerful economic interests and to mobilize the labor sector.

The 75% limitation on subcontracted employees is much higher than labor unions wanted, but any limitation is too much for business. The treatment of contracting by individuals in agriculture may open an unfortunate loophole, but the extent to which that loophole really allows for abuses will not be clear until we see how the decree is applied.

...We See Progress

¶13. (SBU) Although all of our concerns have most definitely not been met, it does seem that the decree is a significant step forward and limits the scope for abuse of subcontracting to curtail labor rights. Local AFL-CIO Solidarity Center representative Patricio Contreras characterized it as positive to LabOff on October 15, although we understand the AFL-CIO is still considering its position. The decree imposes regulation specific to subcontracting for the first time in Ecuador. Registration and reporting requirements will allow the Ministry to get a handle on subcontracting and to resolve abuses. Another indication the decree has merit is the fact that business lawyers are working overtime on the constitutional challenge they say will be presented within days (it will focus on the 75% rule and the fines being levied per worker affected by a violation, rather than per violation). A U.S. business leader came in to see the Ambassador before the decree was published to request Embassy assistance to prevent the issuance of what he considered a "anti-democratic" labor regulation. In our view the decree will make it significantly more costly and more difficult for employers in Ecuador to use subcontracting as a way of thwarting employees in the exercise of their rights.

¶14. (SBU) The GoE's efforts on child labor this year have been even more impressive. We asked for new child labor inspectors to be appointed by the end of the year. Given Ecuador's track record, one might have expected appointment on December 31 followed by months of wrangling about salaries, transportation, and other facilities. Instead, the GoE moved very rapidly to appoint and has been working on the logistical issues diligently ever since. They are not resolved, but they may be by the end of the year.

The Way Ahead

¶15. (SBU) There is no doubt that issuing the decree was difficult for this government, and we believe the effort demonstrates the GoE's commitment to labor reform. The decree comes from a very weak government and in the face of

staunch opposition from the business community. We know the GoE worked hard to come up with a decree which would meet U.S. concerns and be acceptable to labor and business here. Minister of Labor Izurieta has invested his personal credibility in the effort, as has the President. With all his flaws, we believe Izurieta is an ally of labor reform and a star in this government. Any replacement would be very unlikely to be an improvement. Izurieta is now going to pay a political price for his efforts, with the constitutional challenge from the business community. In this context, it is essential to carefully calibrate our reaction to the decree to maximize the prospects for labor reform as we go forward.

16. (SBU) This Embassy defers to and respects the interagency process to set policy on ATPDEA labor petitions and FTA labor strategy, and offers the following points for your consideration. Real labor reform will take time for labor and business to develop common ground. We believe the USG can best help focus debate by making it clear that labor reform is a necessary condition for any FTA with the U.S., while being very careful not to convey this message as an ultimatum. Concluding the review on last year's petitions would turn the page on the decree, and allow the GoE to move toward legislative reforms. Accepting the new ATPDEA petitions for review would also help leverage the reform process.

KENNEY